

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JANE DOE on behalf of herself and her minor child; JANE BOE, Sr. on behalf of herself and her minor child; JOHN COE, Sr. and JANE COE, Sr. on behalf of themselves and their minor children; JOHN FOE, Sr. on behalf of himself and his minor child; JANE GOE, Sr. on behalf of herself and her minor child; JANE LOE on behalf of herself and her medically fragile child; JANE JOE on behalf of herself and her medically fragile child; CHILDRENS HEALTH DEFENSE, and all others similarly situated,

Plaintiffs,

-against-

**Civil Case No.: 1:20-cv-840
(BKS-CFH)**

HOWARD ZUCKER, in his official capacity as Commissioner of Health for the State of New York; ELIZABETH RAUSCH-PHUNG, M.D., in her official capacity as Director of the Bureau of Immunizations at the New York State Department of Health; the NEW YORK STATE DEPARTMENT OF HEALTH; THREE VILLAGE CENTRAL SCHOOL DISTRICT; CHERYL PEDISICH, acting in her official capacity as Superintendent, Three Village Central School District; CORRINE KEANE, acting in her official capacity as Principal, Paul J. Gelinas Jr. High School, Three Village Central School District; LANSING CENTRAL SCHOOL DISTRICT; CHRIS PETTOGRASSO, acting in her official capacity as Superintendent, Lansing Central School District; CHRISTINE REBER, acting in her official capacity as Principal, Lansing Middle School, Lansing Central School District; LORI WHITEMAN, acting in her official capacity as Principal, Lansing Elementary School, Lansing Central School District; PENFIELD CENTRAL SCHOOL DISTRICT; DR. THOMAS PUTNAM, acting in his official capacity as Superintendent, Penfield Central School District; SOUTH HUNTINGTON SCHOOL DISTRICT; DR. DAVID P. BENNARDO, acting in his official capacity as Superintendent, South Huntington School District; DR. DAVID MIGLIORINO, acting in his official capacity as Principal, St. Anthony's High School, South Huntington School District; ITHACA CITY SCHOOL DISTRICT; DR. LUVELLE BROWN, acting in his official capacity as Superintendent, Ithaca City School District; SUSAN ESCHBACH, acting in her official capacity as Principal, Beverly J. Martin Elementary School, Ithaca City School District; SHENENDEHOWA CENTRAL SCHOOL DISTRICT; DR. L. OLIVER ROBINSON, acting in his official capacity as Superintendent, Shenendehowa Central School District; SEAN GNAT, acting in his official capacity as Principal, Koda Middle School, Shenendehowa Central School District; ANDREW HILLS, acting in his official capacity as Principal, Arongen Elementary School, Shenendehowa Central School District; COXSACKIE-ATHENS SCHOOL DISTRICT; RANDALL SQUIER, Superintendent, acting in his official capacity as Superintendent, Coxsackie-Athens School District; FREYA MERCER, acting in

her official capacity as Principal, Coxsackie-Athens High School, Coxsackie-Athens School District; ALBANY CITY SCHOOL DISTRICT; KAWEEDA G. ADAMS, acting in her official capacity as Superintendent, Albany City School District; MICHAEL PAOLINO, acting in his official capacity as Principal, William S. Hackett Middle School, Albany City School District; and all others similarly situated

Defendants.

DECLARATION

GREGG T. JOHNSON, declares under the penalty of perjury, upon information and belief:

1. I am a member of the law firm of *Johnson & Laws, LLC*, which, together with our co-counsel from *Sokoloff & Stern, LLP*, represent four of the named school district Defendants in this action and their administrators (Dkt. Nos. 39, 42, and 51)(hereinafter “Responding Districts”).
2. In addition to the Declarations and Affidavits (and Exhibits thereto) executed by the administrators and/or staff of the Three Village, South Huntington CSD, and Albany CSD; I respectfully submit this Declaration in further opposition to Plaintiff’s motion for a preliminary injunction.
3. As reflected by Exhibit “A” to this Declaration, the Ithaca City School District is presently in the midst of a New York State Education Department Commissioner’s Appeal that was commenced by the parent of Plaintiff “John Joe” (as Plaintiffs have identified him in this action). I respectfully submit this Declaration and the attached documents (Ex. A hereto) which consist of the relevant documents submitted to the New York State Education Department (hereinafter “SED”) as part of the pending appeal commenced on behalf of Plaintiff “John Joe.” Based upon my consultation with the Ithaca CSD’s Board Counsel, it is my understanding that as of the date of this Declaration the underlying SED Appeal being pursued on behalf of Plaintiff “John Joe” is still awaiting a decision by the New York State Commissioner of Education.

Specifically, attached to this Declaration as Exhibit “A” are redacted copies of the following documents previously filed with SED:

- a. The December 18, 2019 Notice and Petition of John Joe’s mother to SED which bears a receipt stamp by the Ithaca CSD of December 20, 2019;
- b. The January 9, 2020 Answer of the Ithaca CSD submitted to SED;
- c. The December 24, 2019 Affidavit by the Ithaca CSD *Superintendent of Schools*, Dr. Luvelle Brown (including Exhibit “1” thereto);
- d. The December 24, 2019 Affidavit of Dr. Melissa Dhundale, the Ithaca CSD *Medical Director*;
- e. The December 26, 2019 Affidavit of the Ithaca CSD’s *Coordinator of Health Services* (including Exhibits “1” through “6” thereto); and
- f. The October 2019 Guidance document from the New York Department of Health which is referenced in the aforementioned documents and was submitted to SED by the Ithaca CSD’s Board Counsel.

4. As the foregoing documents make clear, contrary to the general and Ithaca CSD-specific allegations contained in the Complaint and Plaintiffs’ pending application for a preliminary injunction, the Ithaca CSD’s decision on John Joe’s exemption request was not solely made by the Ithaca CSD Principal (Ex. A at 15). Rather, as Exhibit “A” clearly demonstrates, Doctor Melissa Dhundale, the Medical Director for the Ithaca CSD, promptly reviewed and analyzed John Joe’s exemption request and consulted the official guidance issued by the NYS DOH regarding medical exemption applications (*id.* at 20-22). Moreover, Dr. Dhundale conferred directly with Doctor Elizabeth Rausch-Phung, Director of the Bureau of Immunizations at the NYS

DOH, whom recommended that, in light of the lack of evidence of any contraindication or precaution, John Joe's exemption application should be denied in its entirety (*see id.*).

5. As further indicated by the foregoing documents, despite the recommendations from the NYS DOH to deny John Joe's exemption application on its entirety, Ithaca CSD nevertheless granted John Joe's exemption application with respect to the Hepatitis B immunization on November 21, 2019 (*id.* at 15-16). However, despite receiving such exemption, John Joe's parent elected to homeschool him as a result of their dissatisfaction with the decision on John Joe's exemption application (*id.* at 16).

6. Finally, attached hereto as Exhibit "B" is a redacted copy of the initial medical exemption request submitted to the Albany City School District on behalf of Plaintiff "John Foe."

WHEREFORE, On behalf of the Responding Districts, I respectfully request that the Court: (a) deny Plaintiffs' motion for a preliminary injunction; and (b) grant such other and further relief in favor of the Responding Districts as this Court deems just and proper.

Dated: September 4, 2020



Gregg T. Johnson
Bar Roll No.: 506443